

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT MCFADDEN,

Petitioner,

v.



20-CV-00746 (JLS)

WILLIAM KEYSER,

Respondent.

DECISION AND ORDER

Petitioner Robert McFadden commenced this proceeding on June 4, 2020, when he filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. Dkt. 1. McFadden, after a jury trial in Monroe County Court, was acquitted of two counts of murder in the second degree, as well as the lesser-included offense of first-degree manslaughter—however, he was found guilty of the lesser-included offense of second-degree manslaughter. This Court referred the case to United States Judge Michael J. Roemer for all proceedings under 18 U.S.C. § 636(b)(1)(B) and (C). Dkt. 9.

Pending before the Court is Judge Roemer's March 28, 2023 Report and Recommendation ("R&R") recommending that the petition be denied and that a certificate of appealability also be denied. *See generally* Dkt. 35. Objections were due by April 14, 2023, but no one filed any.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which objections are not raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

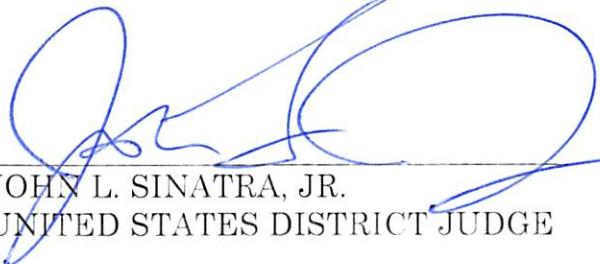
Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer's R&R and the relevant record. In the absence of objections, the Court accepts and adopts Judge Roemer's recommendations to deny the petition in its entirety and on its merits, and not to issue a certificate of appealability.

For the reasons stated above and in the R&R, the relief sought in the petition is DENIED, and the petition is DISMISSED. The Court concludes that McFadden has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and, accordingly, DENIES a certificate of appealability. The Court also certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore DENIES leave to appeal as a poor person. *See Coppededge v. United States*, 369 U.S. 438, 444-46 (1962).

The Clerk is directed to close this case.

SO ORDERED.

Dated: May 9, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE